

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID M. WHITING,

Defendant-Appellant.

UNPUBLISHED

July 25, 1997

No. 189731

Jackson Circuit Court

LC No. 95-072413 FH

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

A circuit court jury convicted defendant of escape, MCL 750.193; MSA 28.390. He was thereafter sentenced to two to six years imprisonment. Defendant appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On the record before us, we conclude that the trial court did not err when it precluded defendant from presenting a duress defense, albeit for a reason not relied upon by the trial court. A defendant is not entitled to present a duress defense to the trier of fact unless there is some evidence from which each element of the defense may be inferred. *People v Lemons*, 454 Mich 234; 562 NW2d 447 (1997); *People v Sekoian*, 169 Mich App 609, 614; 426 NW2d 412 (1988). Accordingly, an escapee may not present a duress defense unless the escapee has sufficient evidence showing a present, imminent and impending threat of conduct which made the escape necessary. *Lemons, supra*; *Sekoian, supra* at 614-615. Threats of future injury will not excuse an escape. *People v Hubbard*, 115 Mich App 73, 78; 320 NW2d 294 (1982). Here, defendant's offer of proof establishes only a threat of future harm. A threat of this nature does not entitle defendant to assert a duress defense. Moreover, defendant has forfeited his defense of duress by failing to turn himself in to authorities immediately after the escape. *Lemons, supra*.

Because defendant was not entitled to assert a duress defense, the trial court did not err when it refused to instruct the jury concerning the defense, *People v Gimotty*, 216 Mich App 254, 257; 549

* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 39 (1996), and when it refused to allow defendant a continuance to comply with MCL 768.21b; MSA 28.1044(2), *Sekoian, supra* at 613-614.

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn